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INTERSTATE COMMERCE COMMISSION

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TRUST AGREEMENT

Dated as of February 1, 1985

between

NICHIMEN AMERICA INC.,

as Beneficiary

and

THE CONNECTICUT NATIONAL BANK,

as Owner Trustee

TEXASGULF INC.

(1985) Equipment Trust No. 1

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## TRUST AGREEMENT

This TRUST AGREEMENT dated as of February 1, 1985 between Nichimen America Inc., a New York corporation (the "Beneficiary"), and The Connecticut National Bank, a national banking association (the "Owner Trustee").

### W I T N E S S E T H:

WHEREAS, the Beneficiary desires to create pursuant hereto an arrangement whereby a trust shall be created for the purposes of acquiring certain Equipment (hereinafter defined) and leasing such Equipment to the Lessee (hereinafter defined); and

WHEREAS, the Owner Trustee is willing to accept the duties and obligations imposed hereby on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### OWNER TRUSTEE'S AUTHORIZATION AND DIRECTION

SECTION 1.1. Creation of Trust. The Beneficiary and the Owner Trustee hereby create a trust (the "Trust"), which Trust shall be identified by the date of this Trust Agreement and shall

be designated as follows:

Texasgulf, Inc. (1985) Equipment Trust No. 1

SECTION 1.2. Authorization to Execute Certain Documents.

The Beneficiary hereby authorizes and directs the Owner Trustee to take the following action:

(a) to execute and deliver the Indenture and Security Agreement dated as of the date hereof (the "Indenture"), in the form heretofore submitted to and approved by the Beneficiary and the Owner Trustee between the Owner Trustee and Wachovia Bank and Trust Company, N.A. (the "Indenture Owner Trustee");

(b) to execute and deliver as lessor the Lease of Railroad Equipment dated as of the date hereof (the "Lease"), in the form heretofore submitted to and approved by the Beneficiary and the Owner Trustee, between the Owner Trustee, as lessor, and Texasgulf, Inc., a Delaware corporation, as lessee (the "Lessee");

(c) to execute and deliver the Participation Agreement (the "Participation Agreement") dated as of the date hereof among the Lessee, the Beneficiary, the Owner Trustee, Morgan Guaranty Trust Company of New York as loan participant (the "Loan Participant"), and the Indenture Owner Trustee;

(d) to accept delivery on the Closing Date, as such term is defined in the Indenture (the "Closing Date") of the Equipment, as such term is defined in the Lease (the "Equipment"), from the Lessee;

(e) on the Closing Date, to execute and deliver one or more Loan Certificates of the Trust (the "Loan Certificates"), substantially in the form set forth in the Indenture, with the blanks as therein completed, all in accordance with the terms and provisions of the Indenture and in such principal amounts determined under and in accordance with the Participation Agreement and Indenture;

(f) to execute and deliver, or to accept in form acceptable to it, each document referred to in the Indenture, the Lease or the Participation Agreement, including without limitation, the Lease Supplement, and required under the terms thereof to consummate the transactions contemplated thereby;

(g) on the Closing Date, upon receipt of the proceeds from the Loan Participant and the Beneficiary, to pay to the Lessee the Lessor's Cost thereof, as such term is defined in the Lease (the "Lessor's Cost"), as provided in the Participation Agreement;

(h) subject to the terms of this Trust Agreement, to exercise all of the rights and perform all the obligations of

the Lessor under the Lease and of the borrower under the Participation Agreement and the debtor under the Indenture; and

(i) to take such other action in connection with any of the foregoing as the Beneficiary may from time to time direct.

SECTION 1.3. Conditions Precedent to Owner Trustee's Obligation and Authority. The obligation and authority of the Owner Trustee to take the actions referred to in paragraphs (e), (g) and (h) (with respect to the rights and obligations of the Owner Trustee under the Participation Agreement under the Indenture) of Section 1.2 hereof shall be subject to the conditions precedent that the conditions set forth in Section 4.02 of the Participation Agreement shall have been complied with in a manner satisfactory to the Beneficiary, that the condition set forth in Section 4.04 of the Participation Agreement shall have been complied with in a manner satisfactory to the Owner Trustee and that an amount in funds immediately available at the place of receipt equal to the equity investment in the Equipment to be made on the Closing Date have been furnished by, or on behalf of, the Beneficiary to the Owner Trustee on the Closing Date, a certificate of the Beneficiary to such effect constituting conclusive evidence, as between the Beneficiary and the Owner Trustee, that such conditions have been complied with in such manner.

## ARTICLE II

### DECLARATION OF TRUSTS

SECTION 2.1. Declaration of Trusts. The Owner Trustee hereby declares that it will hold all estate, right, title and interest in and to the Equipment and any funds transmitted to the Owner Trustee pursuant to the Participation Agreement, the Indenture and the Lease, including, without limitation, all amounts of rent, insurance proceeds, indemnity and other payments of any kind for or with respect to the Equipment or any part thereof, excluding, however, all Excepted Payments, as such term is defined in the Participation Agreement, upon the trusts hereinafter set forth (all such estate, right, title and interest being herein called the "Trust Estate") for the use and benefit of the Beneficiary, subject, however, to the terms and conditions hereof, of the Indenture, including the grant of a security interest by the Owner Trustee in the Estate (as defined in the Indenture), of the Lease and of all other documents referred to herein and therein and the rights of others hereunder and thereunder.

## ARTICLE III

### BENEFICIARY'S AGREEMENTS

The Beneficiary acknowledges and agrees as follows:

SECTION 3.1. Payment to Owner Trustee of Amounts Required to Acquire Equipment. The Beneficiary shall, upon the fulfillment of the conditions set forth in Section 4.02 of the Participation Agreement, make available, or cause to be made available, to the Owner Trustee, on the Closing Date funds in an amount equal to the equity investment in the Equipment to be made by the Beneficiary on such Closing Date in accordance with the terms and provisions of the Participation Agreement.

SECTION 3.2. Indemnification of Owner Trustee; Owner Trustee's Lien on Trust Estate. The Beneficiary shall assume liability for, and shall indemnify, protect, save and keep harmless the Owner Trustee (including any co-Owner Trustee or separate Owner Trustee appointed pursuant to Section 7.6 hereof) and its successors, assigns and agents (each such person being herein referred to as an "Indemnified Person") from and against any and all liabilities, obligations, losses, damages, penalties, taxes (other than any income taxes on fees or other compensation received by the Owner Trustee for serving as a Owner Trustee), claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (hereinafter referred to as claims) which may be imposed on, incurred by or asserted against an Indemnified Person, whether or not also indemnified against by any Lessee, by the manufacturer(s) or vendor(s) of the

Equipment or by any other person, in any way relating to or arising out of this Trust Agreement, the Trust created hereby, the Participation Agreement, the Indenture, the Lease or any document contemplated hereby or thereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Equipment or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust and the Trust Estate or the action or inaction of any Indemnified Person hereunder, provided, however, that the Beneficiary shall not be required to indemnify any Indemnified Person for any claims resulting from acts which constitute the willful misconduct or gross negligence of such Indemnified Person, but (except as set forth in clause (3) of paragraph (b) of Section 7.6 hereof) the misconduct or gross negligence of any one Indemnified Person shall not affect the rights of any other Indemnified Person hereunder, and provided further, that the Beneficiary shall not be required to indemnify the Owner Trustee with respect to claims resulting from (a) any representation or warranty of the Owner Trustee contained herein

proving to be untrue or inaccurate at the time made; (b) any representation or warranty of the Owner Trustee made expressly in its individual capacity and contained in the Participation Agreement proving to be untrue or inaccurate at the time made; (c) (i) the failure of the Owner Trustee to be a banking institution duly organized, validly existing and in good standing under the laws of the United States or the state of its organization, (ii) the execution and delivery of this Trust Agreement or any other document in connection with the transactions contemplated hereby being in contravention of any indenture or agreement to which the Owner Trustee is a party or by which it is bound or (iii) the Owner Trustee not having the power and authority under federal or Connecticut law, rule or regulation to enter into and carry out the terms of this Trust Agreement or any other document executed by the Owner Trustee in connection with the transactions contemplated hereby; and (d) any matter for which the Owner Trustee is liable in its individual capacity pursuant to Section 5.1 hereof. The indemnities contained in this Section shall survive the termination of this Trust Agreement and of the Trust created hereby and such indemnities are expressly made for the benefit of, and shall be enforceable by, each indemnified person notwithstanding the fact that such indemnified person is no longer a party to this Trust Agreement or was not a party to this Trust Agreement on the date of the execution hereof. In addition, to secure the foregoing

indemnities by the Beneficiary, the Owner Trustee shall, to the extent not reimbursed by any Lessee under the Lease or any other person, have a lien on the Trust Estate prior to any interest therein of the Beneficiary.

SECTION 3.3. Preparation of Tax Returns and Other Reports. The Beneficiary shall prepare or cause to be prepared, and may direct the Owner Trustee to file, all tax returns and other governmental reports required to be filed by the Owner Trustee in connection with the transactions contemplated hereby.

Section 3.4. Allocation of Interest. The interest of the Beneficiary in the Trust Estate is 100 percent.

#### ARTICLE IV

##### OWNER TRUSTEE'S AGREEMENTS

The Owner Trustee hereby agrees as follows:

SECTION 4.1. Execution and Delivery of Documents and Performance of Obligations. The Owner Trustee shall accept or execute and shall deliver the documents referred to in Article I hereof, in any other Article hereof or in any directive of the Beneficiary given pursuant hereto, and shall perform with respect to the Trust all the obligations and duties of the Owner Trustee hereunder and thereunder.

SECTION 4.2. Receipt of Funds Under Section 3.1 and

Application Thereof. The Owner Trustee shall receive any amounts paid to the Owner Trustee by, or on behalf of, the Beneficiary pursuant to Section 3.1 hereof and shall apply such amounts in the manner prescribed in the Participation Agreement.

SECTION 4.3. Receipt of Funds Pursuant to Lease or Otherwise and Distribution Thereof. With respect to the Trust, the Owner Trustee shall receive all amounts paid to the Owner Trustee pursuant to the terms of the Lease, any and all proceeds (including insurance proceeds) of the sale, release or other disposition of the Equipment or any part thereof, and all other amounts paid to the Owner Trustee under this Trust Agreement and the other documents referred to herein and therein, and shall distribute forthwith such amounts, first, to payment to the Owner Trustee for any amounts, including fees, expenses, costs or liabilities incurred, for which the Owner Trustee is entitled to payment, reimbursement or indemnity from the Beneficiary and for which the Owner Trustee has not been paid or reimbursed from any other source, and, second, to the payment of the entire balance to the Beneficiary; provided, however, that all rights, privileges and duties of the Owner Trustee to receive and distribute amounts received pursuant to the foregoing are subject to the rights of the holders of the Loan Certificates issued under the Indenture and from time to time outstanding and of the Indenture Owner Trustee, as secured party under the Indenture, to collect, receive and apply such amounts to the indebtedness

evidenced by such Loan Certificates and the security interests provided by the Indenture. It is understood and agreed that the Owner Trustee shall not be obligated to make any distribution until the funds for such distribution have been received by the Owner Trustee in cash or other immediately available funds. Notwithstanding anything to the contrary herein contained, the Beneficiary shall have the right at any time to direct the Owner Trustee to cause all payments (other than indemnity payments payable to the Owner Trustee in its individual capacity and other amounts, including fees, expenses, costs or liabilities incurred for which the Owner Trustee is entitled to payment, reimbursement or indemnity from the Beneficiary and for which the Owner Trustee has not been paid or reimbursed from any source) to be made directly to the Beneficiary, subject to the aforesaid rights of the Indenture Trustee and the holders of the Loan Certificates issued under the Indenture. To effect this direction, the Beneficiary will prepare for the signature and approval of the Owner Trustee, which approval shall not be unreasonably withheld, an appropriate direction, which direction the Owner Trustee agrees to execute and return to the Beneficiary for delivery to the Lessee.

Section 4.4. Payments from Trust Estate Only. All payments to be made by the Owner Trustee under this Agreement shall be made only from the income and the proceeds from the Trust Estate and only to the extent that the Owner Trustee shall have received

income or proceeds from the Trust Estate, except as specifically provided in Section 5.1 hereof. The Beneficiary agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for payment as herein provided and that, except as specifically provided herein, the Owner Trustee shall not be liable in its individual capacity to the Beneficiary for any amounts payable under this Agreement and shall not be subject to any liability in its individual capacity under this Agreement.

Section 4.5. Method of Payment. All amounts payable to the Beneficiary pursuant to this Agreement shall be paid by the Owner Trustee to the Beneficiary or a nominee therefor by crediting, or causing the Indenture Owner Trustee to credit, the amount to be distributed to the Beneficiary to an account maintained by the Beneficiary with the Owner Trustee in immediately available funds or by transferring such amount in immediately available funds to a banking institution with bank wire transfer facilities for the account of the Beneficiary, as instructed from time to time by the Beneficiary. Unless otherwise instructed in writing by the Beneficiary, the Owner Trustee shall direct the Indenture Owner Trustee to pay all amounts payable to the Owner Trustee by the Indenture Owner Trustee pursuant to the Indenture, other than amounts payable to the Owner Trustee in its individual capacity, directly to the Beneficiary.

Section 4.6. Obligations in Connection with Event of

Default Under Lease. In the event the Owner Trustee shall have actual knowledge of a Default or an Event of Default (as such terms are defined in the Lease), the Owner Trustee promptly shall give notice of such Default or Event of Default to the Beneficiary, which notice shall be made by first class registered or certified postage prepaid mail, unless such Default or Event of Default shall have been remedied before the giving of such notice. Subject to the terms of Section 4.8 hereof, the Owner Trustee shall take such action, or refrain from taking such action, with respect to such Default or Event of Default as the Owner Trustee shall be directed in writing by the Beneficiary. If the Owner Trustee shall not have received instructions as above provided within 20 days after mailing notice of such Default or Event of Default to the Beneficiary, the Owner Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Beneficiary. For all purposes of this Trust Agreement, in the absence of actual knowledge, the Owner Trustee shall not be deemed to have knowledge of a Default or an Event of Default unless notified in writing by the Beneficiary, except that if the Owner Trustee is receiving and disbursing funds with respect to the Lease the Owner Trustee shall be deemed to have knowledge of

a Default or an Event of Default upon the failure of the Lessee to pay any installment of Basic Rent (as defined in the Lease) within 5 days after the same shall become due. For purposes of this Trust Agreement, the Owner Trustee shall not be deemed to have actual knowledge of a Default or an Event of Default unless the same is known by an officer or employee in the Bond and Trustee Administration of the Owner Trustee.

SECTION 4.7. Take Certain Action Upon Specific Instructions. Subject to the terms of Section 4.8 hereof and upon the written instruction at any time and from time to time of the Beneficiary, the Owner Trustee shall take such of the following actions as may be specified in such instructions:

(a) give such notice or direction or exercise such right, remedy or power under the Lease or in respect of the Trust Estate as shall be specified in such instructions or take such other action (including, without limitation, such action to preserve or protect the Trust Estate, including the discharge of liens or encumbrances, which the Lessee is not required to take in accordance with the terms of the Lease) as shall be specified in such instructions;

(b) approve as satisfactory to the Owner Trustee or consent to all matters required by the terms of the Lease and other documents referred to herein to be satisfactory to the Owner Trustee or consented to by the Owner Trustee; and

(c) after the expiration or earlier termination of the Lease, convey (subject to any liens, which are not the responsibility of the Owner Trustee to remove), at the expense of the Beneficiary, all of the Owner Trustee's right, title and interest in and to the Equipment or any part thereof for such amount or on such terms and to such purchaser or purchasers as shall be designated in such instructions or lease or otherwise dispose of the Equipment on such terms as shall be designated in such instructions.

SECTION 4.8. Limitation of Owner Trustee's Responsibilities. The Owner Trustee shall not be required to take any action under Section 4.6 or 4.7 hereof unless the Owner Trustee shall have been indemnified by the Beneficiary in manner and form satisfactory to the Owner Trustee against any liability, cost or expense (including reasonable counsel fees) which may be incurred in connection with such action. The Owner Trustee shall not be required to take any action under Section 4.6 or 4.7 hereof, nor shall any other provision of this Trust Agreement be deemed to impose a duty on the Owner Trustee to take any action, if the Owner Trustee shall have been advised by counsel that such action is contrary to the terms of this Trust Agreement, the Participation Agreement, the Indenture or the Lease, or is otherwise contrary to law.

SECTION 4.9. Management of the Trust Estate.

(a) The Owner Trustee shall have no duty or obligation to manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Equipment or any other part of the Trust Estate or otherwise to take or refrain from taking any action under or in connection with the Lease or any other document or any other action with respect to such Equipment except as expressly provided by the terms of this Trust Agreement, or as expressly provided in written instructions from the Beneficiary and no implied duties or obligations shall be read into this Trust Agreement against the Owner Trustee. The Owner Trustee nevertheless agrees in its individual capacity and not in its capacity as Owner Trustee, and at its own cost and expense, promptly to take such action as may be necessary with respect to the Trust to discharge any liens and encumbrances on any part of the Trust Estate resulting from claims against the Owner Trustee not related to its ownership of the Equipment or to the Owner Trustee's administration of the Trust Estate.

(b) The Owner Trustee agrees with respect to the Trust that it will not manage, control, use, sell, dispose of or otherwise deal with the Equipment or any other part of the Trust Estate except (i) as required by the terms of the Participation Agreement, the Indenture or the Lease, (ii) in accordance with the powers granted to or the authority conferred on the Owner Trustee pursuant to this Trust Agreement, or (iii) in accordance with written instructions from the Beneficiary.

ARTICLE V  
CONCERNING THE OWNER TRUSTEE

SECTION 5.1. Standard of Care. The Owner Trustee accepts the trusts hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. The Owner Trustee shall not be answerable or accountable to the Beneficiary under any circumstances except for (i) its own willful misconduct or gross negligence and (ii) when the Owner Trustee actually receives funds, or express written instructions from the Beneficiary, it shall be held to the same degree of care and skill in handling such funds and in complying with such instructions as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

SECTION 5.2. No Duties of Maintenance, Etc. Except in accordance with written instructions furnished by the Beneficiary or except as otherwise provided in paragraph (a) of Section 4.7 hereof, the Owner Trustee shall have no duty with respect to the Equipment or any other part of the Trust Estate (i) to see to any recording or filing of this Trust Agreement, any instrument or document referred to in this Trust Agreement or any security interest or lien or to see to the maintenance of any such documentation, recording or filing, (ii) to see to any insurance on the Equipment or any other part of the Trust Estate or to

effect or maintain any such insurance, whether or not the Lessee shall be in default with respect to the Lease, other than to receive and hold any insurance policies, cover certificates or binders furnished the Owner Trustee by the Lessee pursuant to the Lease, (iii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust Estate or to make or file any reports or returns related thereto, (iv) to confirm, verify or inquire into the failure of the Lessee to send any reports or financial statements of the Lessee, (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of the Lessee's covenants under the Lease with respect to the Equipment or (vi) to approve as satisfactory to them or consent to any matter required by the terms of the Participation Agreement, the Indenture or the Lease or of any other instrument or document executed and delivered by the Owner Trustee pursuant to Article I hereof to be satisfactory to the Owner Trustee or consented to by the Owner Trustee.

SECTION 5.3. Representations and Warranties. THE OWNER TRUSTEE MAKES (a) NO REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION, MERCHANTABILITY OR FITNESS FOR USE OF THE EQUIPMENT OR AS TO ITS TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT WHATSOEVER except that the Owner Trustee hereby represents and warrants to the Beneficiary that

(i) the Owner Trustee shall receive whatever title in and to the Equipment is conveyed to it by the Lessee and (ii) such Equipment shall at all times be free of liens, encumbrances or security interests resulting from claims against the institution acting as Owner Trustee not related to its ownership of such Equipment or to its administration of the Trust Estate, and (b) no representation or warranty as to the validity, legality or enforceability of this Trust Agreement or any of the instruments or documents referred to herein or as to the correctness of any statement contained in any thereof or the due creation or perfection of any lien or security interest purported to be created by any thereof, except that the institution acting as Owner Trustee hereby represents and warrants to the Beneficiary that this Trust Agreement has been duly authorized, executed and delivered by it and, assuming due authorization, execution and delivery hereof by the Beneficiary, constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and that each document described in Article I hereof to be entered into or accepted by the Owner Trustee has been, or will be, executed and delivered or accepted by the Owner Trustee by one of its officers who is, or at the time of execution and delivery or acceptance was or will be, duly authorized to execute and deliver or accept such documents on its behalf.

SECTION 5.4. Reliance on Writings, Use of Agents, Etc. The Owner Trustee shall not incur any liability to anyone in acting

upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed or sent by the proper party or parties. The Owner Trustee may accept a copy of a resolution of the Board of Directors or the Executive Committee, if any, of the Lessee or the Beneficiary certified by the Secretary or an Assistant Secretary of such Lessee or the Beneficiary as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board of Directors or Executive Committee and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Owner Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, or by the President, or by any Executive Vice President or Vice President, or by the Treasurer, or by the Controller, or by the Secretary of the Lessee or the Beneficiary, as the case may be, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by them in good faith in reliance thereon. In the performance of its duties hereunder, the Owner Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Trust Estate, consult with counsel, accountants and other skilled persons to be

selected and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

## ARTICLE VI

### EFFECT OF SALES BY OWNER TRUSTEE

SECTION 6.1. Effect of Sales by Owner Trustee. Any sale of all or any part of the Trust Estate by the Owner Trustee or its agent shall with respect to the Trust bind the Beneficiary and shall be effective for the benefit of the purchasers thereof and their respective successors and assigns to divest and transfer all right, title and interest of the Owner Trustee in the property so sold, and no such purchasers shall be required to inquire as to compliance by the Owner Trustee with any of the terms of this Trust Agreement or to see to the application of any consideration paid for such property.

## ARTICLE VII

### RESIGNATION AND REMOVAL OF OWNER TRUSTEE; APPOINTMENT OF SUCCESSORS

SECTION 7.1. Resignation; Successor Owner Trustee. The Owner Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Beneficiary, such resignation to be effective on the date of

appointment of a successor Owner Trustee as hereinafter provided. In addition, the Beneficiary may at any time with respect to the Trust remove the Owner Trustee without cause by an instrument in writing, which instrument shall designate the effective date of any such removal, delivered to the Owner Trustee. In the case of the resignation or removal of the Owner Trustee, the Beneficiary shall appoint a successor Owner Trustee by an instrument signed by the Beneficiary. If the Beneficiary shall not have appointed a successor Owner Trustee within 30 days after such resignation or removal, the Owner Trustee shall continue as Owner Trustee and may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor shall have been appointed by the Beneficiary as above provided. Any successor Owner Trustee so appointed by such court shall immediately and without further act be superseded by any successor Owner Trustee thereafter appointed by the Beneficiary. Notwithstanding the foregoing provisions of this paragraph, if the fees and expenses payable to the Owner Trustee as provided in Article X hereof are not paid, the Owner Trustee may resign by giving at least 60 days' prior written notice to the Beneficiary and shall not be required nor suffer any liability for failing to await the appointment of a successor Owner Trustee.

A successor Owner Trustee hereunder shall be deemed a Owner Trustee for all purposes hereof, and each reference herein

to the Owner Trustee shall thereafter be deemed to include such successor.

SECTION 7.2. Acceptance of Appointment. Any successor Owner Trustee, whether appointed by a court or by the Beneficiary, shall execute and deliver to its or his predecessor Owner Trustee an instrument reasonably satisfactory to such predecessor Owner Trustee accepting such appointment, and thereupon such successor Owner Trustee, without further act, shall with respect to the Trust become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts hereunder with like effect as if originally named as an Owner Trustee herein; but nevertheless upon the written request of such successor Owner Trustee such predecessor Owner Trustee shall execute and deliver an instrument reasonably satisfactory to such successor Owner Trustee transferring to such successor Owner Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor Owner Trustee any property or monies then held by such predecessor Owner Trustee upon the trusts herein expressed.

SECTION 7.3. Qualification of Successor Owner Trustee. Any successor to the Owner Trustee, however appointed, shall be a

solvent bank or trust company organized under the laws of the United States or any jurisdiction thereof having a combined capital and surplus of at least \$50,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Owner Trustee hereunder upon reasonable or customary terms.

SECTION 7.4. Merger of Owner Trustee. Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from or surviving any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred, shall, subject to the terms of Section 7.3 hereof, be the Owner Trustee under this Trust Agreement without any further act.

SECTION 7.5. Status of Successor Owner Trustee. A successor Owner Trustee shall have the same duties, powers and discretion conferred herein on the Owner Trustee. A successor Owner Trustee may accept the assets of the Trust Estate delivered to him or it by his or its predecessor Owner Trustee as constituting the entire assets of the Trust Estate and shall not be required to take any action to determine what constitutes the Trust Estate or to obtain possession of any assets thereof or to investigate any acts, omissions or misconduct of his or its

predecessor Owner Trustee.

SECTION 7.6. Appointment of Co-Owner Trustees and Separate Owner Trustees.

(a) At any time or times for the purpose of meeting the legal requirements or any jurisdiction in which any part of the Trust Estate may at the time be located, the Owner Trustee shall have power to appoint one or more solvent persons to act as co-Owner Trustee of all or any part of the Trust Estate or to act as separate Owner Trustee or Owner Trustees of any property constituting a part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such person or persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section.

(b) Every separate Owner Trustee or co-Owner Trustee shall, to the extent permitted by law, be appointed subject to the following terms:

(1) The rights, powers, duties and obligations conferred or imposed upon any such separate Owner Trustee or co-Owner Trustee shall not be greater than those conferred or imposed upon the Owner Trustee, and such rights and powers shall be exercisable only jointly with the Owner Trustee, except to the extent that, under any law of any jurisdiction in which any

particular act or acts are to be performed, the Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights and powers shall be exercised by such separate Owner Trustee or co-Owner Trustee subject to the provisions of subsection (b)(4) of this Section.

(2) The Owner Trustee may at any time, by an instrument in writing executed by it, accept the resignation of or remove any separate Owner Trustee or co-Owner Trustee appointed under this Section.

(3) No Owner Trustee or co-Owner Trustee under this Trust Agreement shall be liable by reason of any act or omission of any other Owner Trustee or co-Owner Trustee under this Trust Agreement, provided that, to the extent any individual Owner Trustee is itself so liable pursuant to the terms of this Trust Agreement, the Owner Trustee shall be answerable and accountable to the Beneficiary for any acts or failures to act of any such individual Owner Trustee appointed hereunder who is an officer or employee of the Owner Trustee, but such individual Owner Trustee shall be answerable and accountable only for the acts or failures to act of the individual Owner Trustee alone.

(4) No power given to such separate Owner Trustee or co-Owner Trustee shall be separately exercised hereunder by such separate Owner Trustee or co-Owner Trustee except with the consent in writing of the Owner Trustee, anything

herein contained to the contrary notwithstanding.

(c) Upon the acceptance in writing of such appointment by any such separate Owner Trustee or co-Owner Trustee, it shall be vested with the Trust Estate to which its appointment relates as specified in the instrument of appointment, subject to all the terms of this Trust Agreement.

#### ARTICLE VIII

##### TRANSFER OF THE BENEFICIARY'S INTEREST

SECTION 8.1. Restrictions on Transfer or Assignment. The Beneficiary shall not assign, convey or otherwise transfer any of its right, title or interest in the Trust Estate or in any of the Basic Agreements (as such term is defined in the Indenture) (the "Basic Agreements") to which it is a party, provided, however, that the Beneficiary may transfer, at its sole cost and expense, all or any part of, its right, title and interest in the Trust Estate or in any of the Basic Agreements to which it is a party to any person or entity acquiring all or substantially all of the assets of the Beneficiary or with which the Beneficiary may consolidate or into which it may merge or to any other person or entity (hereinafter in this Section 8.1 referred to as the "Transferee") if, but only if, (i) the Transferee has the requisite power and authority to enter into and carry out the transactions contemplated thereby and hereby, (ii) the Transferee

enters into an agreement or agreements, in form and substance satisfactory to the Owner Trustee, the Indenture Owner Trustee, the Lessee, and the Reference Bank, as such term is defined in the Indenture (the "Reference Bank"), whereby the Transferee confirms that it shall be deemed a party to all Basic Agreements to which the Beneficiary is a party, and agrees, to the extent of the interest transferred to it, to be bound by all of the terms of, and to undertake all of the obligations of the Beneficiary contained in, all Basic Agreements to which the Beneficiary is a party, and to assume the Beneficiary's obligations under all Basic Agreements to which the Beneficiary is a party, (iii) such transfer does not violate any provisions of the Securities Act of 1933, as amended, (iv) the Transferee is either (x) a business corporation not included in clause (y) below or leasing corporation organized and operating under the laws of any state of the United States with a net worth computed according to generally accepted accounting principles of at least \$50,000,000 or (y) a bank, trust company, insurance company, pension trust, credit, finance corporation or other financial institution operating under the laws of the United States or any state thereof with a combined capital and surplus of at least \$50,000,000, or (z) a business corporation organized and operating under the laws of any state of the United States or a bank, trust company, insurance company, pension trust, credit, finance or leasing corporation or other financial institution (or

subsidiary or affiliate thereof) organized and operating under the laws of the United States or any state thereof, whose direct or indirect parent meets the qualifications set forth in clause (x) or (y) above, respectively, provided that such parent unconditionally and irrevocably guarantees the due and punctual performance and observance of the obligations of such subsidiary under all Basic Agreements to which such subsidiary shall have become a party pursuant to the agreement referred to in (ii) above by an instrument in form and substance reasonably satisfactory to the Owner Trustee, the Indenture Owner Trustee, the Lessee and the Reference Bank, (v) the Owner Trustee, the Indenture Owner Trustee, the Lessees and the Reference Bank shall have received evidence acceptable to them as to (w) compliance with clauses (i), (ii), (iii) and (iv) above, and (vi), (vii) and (viii) below, (x) the due authorization, execution, delivery, validity and enforceability of the agreement referred to in clause (ii) above, (y) if there will be more than one Beneficiary after giving effect to such transfer, the Trust Estate not being taxed as an "association" within the meaning of the Internal Revenue Code of 1954, as amended, and (z) if applicable, the due authorization, execution, delivery, validity and enforceability of the guaranty referred to in clause (iv) above, (vi) after giving effect to such transfer, there shall be no more than five (5) Beneficiaries, none of which shall own less than a ten (10) percent beneficial interest in the Trust Estate, (vii) if there

is at the time of the proposed transfer more than one Beneficiary, the consent of each Beneficiary to such transfer shall have been given in writing, and (viii) immediately before and after such transfer, the Transferee shall be solvent. Upon any such transfer by the Beneficiary as above provided, the Transferee shall be deemed a "Beneficiary" or "Owner Participant" for all purposes hereof to the extent of the interest transferred to it and of any Basic Agreement, and shall be deemed to have made the investment in the Equipment previously made by the Beneficiary, and each reference in any Basic Agreement to the Owner Participant or the Beneficiary shall thereafter be deemed to include the Transferee. The Beneficiary making such a transfer shall not have any obligation or liability with respect to the transferred interest, to the extent any such obligation or liability arises after such transfer, but shall continue to be liable to the extent that any such obligation or liability arose on or prior to such transfer.

If at any time there shall be more than one Beneficiary, each reference herein or in any Basic Agreement to the Owner Participant or the Beneficiary shall thereafter be deemed to mean each Owner Participant or Beneficiary. The relative rights of the Beneficiaries as regards each other (such as distributive shares and the number or percentage required for taking action) shall be set forth in an instrument executed at the time of a transfer by the parties to such transfer, a copy of which shall

be furnished to the Owner Trustee, Indenture Owner Trustee and the Reference Bank.

SECTION 8.2. Notice of Transfer. If the Beneficiary shall propose to transfer or assign its interests hereunder with respect to the Trust, it shall give written notice to the Owner Trustee and the Indenture Owner Trustee at least 15 days prior thereto specifying the name and address of the proposed transferee or assignee, and enclosing the agreement or agreements referred to in Section 8.1 hereof.

#### ARTICLE IX

##### TERMINATION OF AND AMENDMENT TO TRUST

SECTION 9.1. Termination. This Agreement and the trusts created hereby shall terminate and the Trust Estate shall, subject to the Participation Agreement, the Indenture and Section 4.3 hereof, be distributed to the Beneficiary, and this Agreement shall be of no further force or effect, upon the earlier of (i) the sale or other final disposition by the Owner Trustee of all property constituting part of the Trust Estate and the final distribution by the Owner Trustee of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms of Section 4.3 hereof and (ii) 21 years less one day after the death of the last survivor of all the descendants living on the date of this Agreement of the members, as of such

date, of the Boards of Directors of the Owner Trustee and the Lessee, but if any rights, privileges or options hereunder shall be or become valid under applicable law for a period subsequent to the 21st anniversary of the death of such last survivor (or without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall continue in effect, but only if such nontermination and continuation shall then be valid under applicable law, until such time as the same shall, under applicable law, cease to be valid.

Section 9.2. Termination at Option of Beneficiary. The provisions of Section 9.1 hereof notwithstanding, this Agreement and the trusts created hereby shall terminate and the Trust Estate shall be distributed to the Beneficiary, and this Agreement shall be of no further force and effect, upon the election of the Beneficiary, made by giving notice to the Owner Trustee, if such notice shall be accompanied by a written agreement of the Beneficiary assuming all the obligations of the Owner Trustee under or contemplated by the Basic Agreements and all other obligations of the Owner Trustee incurred by it as Owner Trustee hereunder; provided, however, that no such election

shall be effective until the lien of the Indenture has been released and until payment in full of the principal of and premium, if any, and interest on the Loan Certificates. Such written agreement shall be satisfactory in form and substance to the Owner Trustee and shall release the Owner Trustee from all further obligations of the Owner Trustee hereunder and under the agreements mentioned in the preceding sentence.

SECTION 9.3. Distribution of the Trust Estate Upon Termination. Upon any termination of the Trust pursuant to the provisions of Section 9.1 hereof, the Owner Trustee shall transfer title of the Trust Estate to the Beneficiary without recourse or warranty of any kind, and, upon making such transfer and accounting for all funds which have come into its hands, the Owner Trustee shall be discharged and free of any further liability hereunder with respect to the Trust, except such liability, not payable out of the assets of the Trust Estate, as may be shown by such accounting then to exist in accordance with the other provisions of this Trust Agreement.

No later than the effective date of termination of the Trust, the Owner Trustee shall execute and deliver to the Beneficiary or to any person designated in writing by the Beneficiary a bill of sale (together with such number of additional counterparts necessary for recording) and other written instrument or instruments all without recourse or

warranty of any kind, but otherwise in form and content reasonably requested by the Beneficiary prior to such termination, evidencing the transfer of title to the Trust Estate to the Beneficiary or to any such person.

SECTION 9.4. Supplements and Amendments to This Trust Agreement and Other Documents. At any time and from time to time (i) the Owner Trustee, together with the Beneficiary, may execute and deliver an amendment or a supplement to this Trust Agreement to the extent, but only to the extent, that it relates to the Trust for the purpose of adding provisions to or changing or eliminating provisions of this Trust Agreement and the Trust as specified in such a request, provided, however, that no such amendment or supplement shall make any change with respect to the Trust which is prohibited by the Indenture or the Lease, or any other document referred to herein and (ii) upon the written request of the Beneficiary, the Owner Trustee shall enter into such written amendment of or supplement to any of the other documents referred to herein or therein as the parties thereto may agree to (to the extent such agreement is required) and as may be specified in such request, or execute and deliver such written waiver of modification of the terms of any such other document as may be specified in such request.

If the Owner Trustee reasonably believes that any document required to be executed pursuant to the terms of this

Section increases the duties or liabilities of, or adversely affects any right, immunity or indemnity in favor of, the Owner Trustee under this Trust Agreement, the Owner Trustee may decline to execute such document until provision shall have been made with respect thereto which is reasonably satisfactory to the Owner Trustee.

#### ARTICLE X

##### COMPENSATION, COSTS AND EXPENSES OF OWNER TRUSTEE

SECTION 10.1. Compensation, Costs and Expenses of Owner Trustee. The Owner Trustee shall be reimbursed by the Beneficiary for all Transaction Costs (as such term is defined in the Participation Agreement) incurred by or payable to the Owner Trustee. Thereafter the Owner Trustee or its successor shall receive as compensation for its ordinary services hereunder such fees as may heretofore and from time to time hereafter be agreed upon between the Beneficiary and the Owner Trustee or its successor and shall be reimbursed for its ordinary costs and expenses hereunder, including the reasonable fees and expenses of its counsel.

ARTICLE XI  
MISCELLANEOUS

SECTION 11.1. Entire Agreement. This Trust Agreement embodies the entire agreement and understanding between the Beneficiary and the Owner Trustee relating to the subject matter hereof and of the Trust created pursuant hereto and upon execution and delivery of this Trust Agreement will supersede and restate all prior agreements and understandings relating to the Trust created thereby.

SECTION 11.2. Notices. Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing and delivered by hand or mailed by first class mail, postage prepaid, if to the Owner Trustee, addressed to it at 777 Main Street, Hartford, Connecticut 06115, Attention: Bond and Owner Trustee Administration, or to such other address as the Owner Trustee may have set forth in a written notice to the Beneficiary, and, if to the Beneficiary, addressed to it at 1185 Avenue of the Americas, New York, New York 10036, Attention: Treasurer, or to such other address as the Beneficiary may have set forth in a written notice to the Owner Trustee. Whenever any notice in writing is required to be given by the Owner Trustee or the Beneficiary, such notice shall be deemed given and such requirement satisfied three Business Days after such notice is deposited with the United States Postal Service, first class

mail, postage prepaid, addressed as provided above.

All communications and notices hereunder may be given in person by first class mail, postage prepaid, or by telephone, telegram or telecopier, charges prepaid, promptly confirmed by first class mail, postage prepaid.

SECTION 11.3. Situs of Trust; Governing Law. This Trust Agreement has been, and the Trust created hereby is to be, accepted by the Owner Trustee and will be located and administered in the State of Connecticut and the validity, construction and all rights under this Trust Agreement and Trust shall be governed by the laws of such State.

SECTION 11.4. Non-Segregation of Monies. All monies received by the Owner Trustee under or pursuant to any provisions of this Trust Agreement shall constitute trust funds for the purpose for which they were paid or are held, but need not be segregated in any manner from any other monies except to the extent required by law and may be deposited by the Owner Trustee under such conditions as may be prescribed or permitted by law for trust funds, and the Owner Trustee shall not be liable for any interest thereon.

SECTION 11.5. Benefit of Parties, Successors and Assigns. This instrument shall be binding upon, and shall inure solely to the benefit of, the parties hereto, the Indenture Owner Trustee,

the Loan Participant, the Lessee, the Reference Bank and their respective successors and assigns; provided, however, that any third party having a claim against either the Owner Trustee or the Trust Estate for which indemnification is provided in Section 3.2 hereof may enforce such claim directly against the Beneficiary, subject to the limitations contained herein.

SECTION 11.6. Survival of Representations and Warranties.

All representations and warranties contained herein shall survive the termination of this Trust Agreement and of the Trust.

SECTION 11.7. Severability of Invalid Provisions. Any

provision of this Trust Agreement which is prohibited or unenforceable in any jurisdiction as to the Trust and such jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto, hereby waive with respect to the Trust any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

SECTION 11.8. Effect of Waiver. Waiver of the breach of any provision hereunder shall not be deemed a waiver of any prior or subsequent breach of the same or any other provision hereof.

SECTION 11.9. Remedies Not Exclusive. Pursuit of any remedy with respect to the Trust shall not be deemed the waiver of any other remedy hereunder or at law or in equity.

SECTION 11.10. References to Agreements and Instruments. Except as otherwise indicated, all the agreements and instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms hereof and thereof.

SECTION 11.11. Headings and Table of Contents. The division of this Trust Agreement into articles and sections, the provision of a table of contents and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of the Trust Agreement.


SECTION 11.12. Construction of References. Unless the context otherwise requires, all references in this instrument to designated Articles, Sections and other subdivisions are to designated Articles, Sections and other subdivisions of this instrument, and the words herein, hereof and hereunder and other words of similar import refer to this instrument as a whole and not to any particular Article, Section or other subdivision.

SECTION 11.13. Counterpart Execution and Dating. This Trust Agreement and any amendment or supplement to this Trust Agreement


may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all of such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to, and retained by, the parties hereto. Although this Trust Agreement is dated as of the date first above written for convenience and for purposes of reference, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Trust Agreement shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the Owner Trustee and the Beneficiary have each caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

NICHIMEN AMERICA INC.

By:   
Title: PRESIDENT

THE CONNECTICUT NATIONAL BANK

By:   
Trust Officer